

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:	:	
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AVAYA INC, et al.	:	
	:	
-----	:	1:17-cv-7379-GHW
MARLENE CLARK,	:	
Appellant	:	SUMMARY ORDER
	:	
-v-	:	
AVAYA INC, et al.,	:	
Appellees	:	
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GREGORY H. WOODS, United States District Judge:

On September 18, 2017, Judge Stuart Bernstein issued an order concluding that the benefits Marlene Clark received under her husband’s supplemental pension plan following his death were not “retiree benefits” within the meaning of 11 U.S.C. § 1114 (“Section 1114”). *In re Avaya Inc.*, 573 B.R. 93 (Bankr. S.D.N.Y. 2017) (the “Bankruptcy Opinion”). Ms. Clark promptly appealed that decision to this Court. Dkt. No. 1. Shortly after filing the appeal, Ms. Clark’s counsel wrote the Court, requesting that the Court expedite the briefing of, and decision on, this appeal, explaining that the Bankruptcy Court plans to consider confirmation of debtor’s plan on November 15, 2017, and that confirmation of the plan would moot the appeal. Letter of Jeffrey Chubak, September 28, 2017, Dkt. No. 3. The Court granted the parties’ joint request for expedited briefing of this appeal, Dkt. No. 6, and has expedited its review of the appeal. Because the reasoning and conclusions of the Bankruptcy Opinion are sound, the Court now AFFIRMS the Bankruptcy Opinion.

I. Standard of Review

A district court has jurisdiction to hear appeals from bankruptcy courts under 28 U.S.C. § 158(a), which provides that “[t]he district courts of the United States shall have jurisdiction to hear appeals . . . from final judgments, orders, and decrees; . . . [and] with leave of the court, from other

interlocutory orders and decrees . . . of bankruptcy judges.” 28 U.S.C. § 158(a)(1), (3). The parties agree that the Court has jurisdiction to hear this appeal because the Bankruptcy Opinion constituted a final determination regarding the proper treatment under Section 1114 of Ms. Clark’s interest in the claimed benefits. Part VIII of the Federal Rules of Bankruptcy Procedure outlines the procedure governing such appeals. Fed. R. Bankr. P. 8001. The Court reviews the Bankruptcy Court’s legal conclusions *de novo* and its findings of fact for clear error. *See In re Hyman*, 502 F.3d 61, 65 (2d Cir. 2007).

II. Adoption of Reasoning and Conclusions of Bankruptcy Opinion

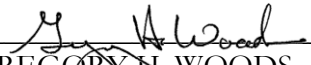
The Court has reviewed the Bankruptcy Opinion, the briefing and argument by the parties, and the record on appeal. Having done so, the Court adopts the reasoning and conclusions of the Bankruptcy Opinion, which the Court believes are sound. To the extent that Ms. Clark has raised issues in this appeal that were not raised before the Bankruptcy Court, the Court has not considered them, because they are not properly before the Court. *See In Re Schick*, 1998 WL 397849, * 7 (S.D.N.Y. July 16, 1998). While the Court could write many more words to reach the same conclusion as Judge Bernstein in the Bankruptcy Opinion, it could not do so sufficiently in advance of the scheduled confirmation hearing to provide Ms. Clark a meaningful opportunity to seek further review of the Bankruptcy Opinion if she wishes to do so. Given that deadline, and mindful that any further review of the Court’s affirmation of the Bankruptcy Opinion will be “independent and plenary,” *In re Caldor Corp.*, 303 F.3d 161, 166 (2d Cir. 2002), the Court has issued this summary order.

III. Conclusion

For the reasons stated above, the Bankruptcy Opinion is AFFIRMED. The Clerk of Court is directed to enter judgment accordingly, and to close this case.

SO ORDERED.

Dated: November 2, 2017
New York, New York



GREGORY H. WOODS
United States District Judge